

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REGINALD T. GILBERTBEY,)	
)	
Plaintiff,)	CIVIL ACTION NO. 05-69E
v.)	Judge Sean J. McLaughlin
UNITED STATES OF AMERICA,)	Magistrate Judge Baxter
et al.,)	<i>Electronically Filed</i>
Defendants.)	

**MOTION TO DISMISS OR, IN
THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

AND NOW, come defendants, the United States of America, Department of Justice, Federal Bureau of Prisons, and FCI McKean ("Defendants"), by their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Jessica Lieber Smolar, Assistant United States Attorney for said district, and, pursuant to Rule 12(b) (1) and (6) of the Federal Rules of Civil Procedure, respectfully move the Court to issue an Order dismissing the Amended Complaint of Plaintiff Reginald T. Gilbertbey with prejudice, upon the following grounds:

1. The Amended Complaint fails to state a claim upon which relief can be granted; and
2. This Court lacks subject matter jurisdiction over Plaintiff's Amended Complaint.

Alternatively, pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants move the Court to enter summary judgment in favor of Defendants, upon the grounds that there is no genuine issue as to any material fact and the Defendants are entitled to judgment as a matter of law.

A Memorandum of Law in support of this Motion together with the Declaration of Roberta M. Truman ("Exhibit "A") and attachments, are being filed simultaneously herewith and the contents therein incorporated by reference.

WHEREFORE, Defendants respectfully request that the Court issue an Order dismissing the Amended Complaint of Plaintiff Reginald T. Gilbertbey with prejudice and with costs being assessed against Plaintiff or enter judgment in favor of Defendants.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/Jessica Lieber Smolar
JESSICA LIEBER SMOLAR
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Dismiss and, in the Alternative, for Summary Judgment was duly served this 27th day of June, 2006, by first-class mail, to and upon the following:

Reginald Thaddeus Gilbertbey
Reg. No. 03854-078
US Penitentiary, Allenwood
PO Box 3500
White Deer, PA 17887

/s/Jessica Lieber Smolar
JESSICA LIEBER SMOLAR
Assistant U.S. Attorney